

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014070309

ORDER DENYING MOTION TO
DISMISS

On June 27, 2014, Student's parent on behalf of Student filed a request for a due process hearing (complaint) with the Office of Administrative Hearings, naming the San Jose Unified School District (San Jose) as the respondent.

On July 10, 2014, San Jose filed a motion to dismiss portions of the complaint, contending that Student attended a charter school within a different school district beginning in August 2013.

On July 15, 2014, Student filed an opposition to the motion. In the opposition, Student argues that, although Student attended a charter school beginning in August 2013, Student and Student's parent continued to reside within the jurisdictional boundaries of San Jose at all times relevant to this matter. Therefore, Student contends that San Jose had a child find obligation to Student even after Student began to attend the charter school, at least until the date on which the charter school found Student's eligible for special education.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the pupil in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under special education law is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

A school district must “actively and systematically” seek out all children with exceptional needs who reside within the district. (Ed. Code, § 56300.) All children with disabilities who are in need of special education and related services shall be “identified, located, and assessed....” (Ed. Code, § 56301, subd. (a).) A district is also responsible for “the planning of an instructional program to meet the assessed needs.” (Ed. Code, § 56302.) These duties are often described as a district’s “child find” obligations.

A school district’s special education obligations to its residents do not automatically end just because a child is attending school within the jurisdictional boundaries of a different school district. For example, a district of residence may still be obligated to conduct a special education assessment if the child’s parents request one, even if the child is attending a private school within the jurisdictional boundaries of another district. (See 71 Fed. Reg. 46593 (August 14, 2006).)

DISCUSSION

In the motion to dismiss, San Jose contends that once Student began attending the charter school, Student’s “residence” changed. San Jose argues that a pupil cannot have two residences, so once Student began “residing” within the jurisdiction of the charter school, Student ceased to reside within the jurisdiction of San Jose.

San Jose is confusing legal residence with school attendance. Just because Student started attending a charter school does not change Student’s legal residence. Government Code section 244, which San Jose relies upon, affirms that the residence of an unmarried child who lives with a parent is in the parent’s home. (Gov’t Code, § 244, subd. (d).) Student did not “reside” in the charter school.

San Jose also relies upon Education Code section 47646, subdivision (a), in support of its position. That subdivision provides, in part:

A charter school that is deemed to be a public school of the local educational agency that granted the charter for purposes of special education shall participate in state and federal funding for special education in the same manner as any other public school of that local educational agency. A child with disabilities attending the charter school shall receive special education instruction or designated instruction and services, or both, in the same manner as a child with disabilities who attends another public school of that local educational agency. The agency that granted the charter shall ensure that all children with disabilities enrolled in the charter school receive special education and designated instruction and services in a manner that is consistent with their individualized education program and is in compliance with the federal Individuals with Disabilities Education Act....

(Ed. Code, § 47646, subd. (a).)

Nothing in that section changes the legal residence of a child or addresses the responsibilities a district of residence may have when a child attends a charter school which is chartered by another district. San Jose cites to no legal authority that supports its position that Student's residence changed. The motion to dismiss must be denied.

Although it is not clear from San Jose's moving papers. It is possible that San Jose is arguing that Student's attendance at the charter school changed some of San Jose's legal responsibilities toward Student with respect to special education. If so, that is an issue properly addressed at an evidentiary hearing, not on a motion to dismiss.

ORDER

The motion to dismiss is denied. The matter shall proceed as scheduled.

DATE: July 17, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings